

Scholarly Commons @ UNLV Boyd Law

Nevada Supreme Court Summaries

Law Journals

5-29-2008

Summary of Mayfield v. Koroghli, 124 Nev. Adv. Op. Citation 34

Nevada Law Journal

Follow this and additional works at: <https://scholars.law.unlv.edu/nvscs>



Part of the [Contracts Commons](#)

Recommended Citation

Nevada Law Journal, "Summary of Mayfield v. Koroghli, 124 Nev. Adv. Op. Citation 34" (2008). *Nevada Supreme Court Summaries*. 434.

<https://scholars.law.unlv.edu/nvscs/434>

This Case Summary is brought to you by the Scholarly Commons @ UNLV Boyd Law, an institutional repository administered by the Wiener-Rogers Law Library at the William S. Boyd School of Law. For more information, please contact youngwoo.ban@unlv.edu.

***Mayfield v. Koroghli*, 124 Nev. Adv. Op. Citation 34 (May 29, 2008)**

Contract Law – Specific Performance for Real Property

Summary

This case is a consolidated appeal from district court judgments granting specific performance and awarding costs in a real property action.

Disposition/Outcome

Affirmed. Judgment in favor of Appellee Ray Koroghli (“Koroghli”) granting specific performance because Appellants Seaynoah Mayfield and Helen Mayfield (“Mayfields”) were not excused from performing under the contract for the sale of real property and Koroghli showed that he was ready, willing, and able to perform. However, the award of costs to Koroghli is reversed because the district court abused its discretion by failing to attempt to apportion costs incurred while litigating against the Mayfields from those costs incurred while litigating against Ellen Ross (“Ross”).¹ Accordingly, the matter is remanded to the district court for it to consider apportionment of any costs awarded to Koroghli consistent with the rule adopted in the opinion.

Factual and Procedural History

In 1999, the Mayfields entered into a contract with Satsoy Thay (“Thay”) for the sale of land in Henderson, NV. Thay assigned the contract to Koroghli who hired real estate agent Ross to make an offer on the property to the Mayfields and represent his interests in the transaction. The first contract expired and the parties entered into a second contract on January 5, 2000. The second contract provided for the close of escrow 60 days from the date that Koroghli obtained commercial rezoning and subdivision of the property. The contract did not contain a date by which performance must occur, nor did it contain a clause declaring time of the essence.

Due to efforts by the Mayfields and Koroghli, the Henderson City Council rezoned the property on September 5, 2000 but did not approve it for commercial subdivision. In early 2001, Koroghli offered to waive the commercial subdivision condition and close on the property. The Mayfields declined the offer and committed to assisting in obtaining all the original goals of the contract. The parties continued to pursue approval for commercial subdivision to no avail. On February 26, 2003, the Mayfields repudiated the contract and refused to sell the property to Koroghli. The Mayfields did not provide Koroghli with prior notice or reason. Koroghli responded by sending the Mayfields a letter indicating he was “ready, willing, and able” to perform, and demanding the close of escrow.

Koroghli filed suit against the Mayfields seeking specific performance and against Ross alleging breach of contract and breach of fiduciary duty. The Mayfields asserted cross-claims against Ross. Koroghli and the Mayfields settled out-of-court with Ross and she was dismissed from the case. The district court held that the Mayfields breached the contract and that Koroghli

¹ Both Koroghli and the Mayfields settled out of court with Ellen Ross and she was dismissed from the case.

was entitled to specific performance. The Mayfields had the duty to fix a reasonable time for performance on the commercial subdivision clause and notify Koroghli of that time before declaring default. The Mayfields had that duty because the contract did not contain a date by which Koroghli had to obtain approval for commercial subdivision or a clause making time of the essence. The Court awarded specific performance of the contract to Koroghli and awarded costs in the amount of \$52,690.91.

Discussion

A. *Specific Performance of Contract for Sale of Real Property*

The Mayfields argued on appeal that the grant of specific performance was improper for two reasons. First, The Mayfields asserted that they were not required to make a demand on Koroghli to perform by a certain date. Second, the Mayfields argued that Koroghli did not and was unable to perform according to the terms of the contract. The Supreme Court reviewed the district court's decision for an abuse of discretion.

1. *Time not of the Essence for Performance of the Contract*

The Mayfields argued that a demand for performance is not necessary unless it is required by the terms or nature of the contract and that, even if a demand is required, an exception exists when it is apparent that a demand would be unavailing or constitute a useless formality. Specifically, the Mayfields argue that such a demand would have been futile because if Koroghli intended to perform, he would have done so prior to the repudiation of the contract.

The Court began its analysis by stating the law on time for performance of contracts. Time for performance under a contract is not considered of the essence unless the contract expressly so provides or the circumstances of the contract so imply.² Parties generally must perform under a contract within a reasonable time if time is not of the essence.³ Whether time is of the essence depends upon the nature of the contract and the particular circumstances involved.⁴ In the absence of a clause making time of the essence, a party's failure to perform within a reasonable time generally does not constitute a material breach of the agreement.⁵ In the absence of a clause in the contract, a party may make it so by demanding performance by a certain date or time as long as the party fixes a reasonable time for the completion of the contract and gives notice to the other party of an intention to abandon the contract unless it is completed within the specified time.⁶ By making such a demand, the time for a party's performance becomes a material term of the contract and failure to perform by the time specified usually constitutes and has the legal effect of a material breach.⁷

² See 15 Richard A Lord, *Williston on Contracts* § 46:3, at 399-404 (4th ed. 2000).

³ *Stratton v. Tejani*, 187 Cal. Rptr. 231, 235 (Ct. App. 1982).

⁴ *Mohr Park Manor, Inc. v. Bank of Nevada*, 87 Nev. 520, 522, 490 P.2d 217, 218 (1971).

⁵ See *Zancanaro v. Cross*, 339 P.2d 746, 749 (Ariz. 1959); *Deep Nines, Inc. v. McAfee, Inc.*, 246 S.W.3d 842, 846 (Tex. App. 2008).

⁶ See 15 Richard A Lord, *Williston on Contracts* § 46:16, at 484-85 (4th ed. 2000).

⁷ See *O'Malley v. Cummings*, 229 N.E.2d 878, 880-81 (Ill. App. Ct. 1967); *New Colony Homes v. Long Island Property*, 803 N.Y.S.2d 615, 616 (App. Div. 2005).

The Court proceeded to analyze the contract between the Mayfields and Koroghli according to the established law. The Court noted that the contract did not expressly make time of the essence and the circumstances did not indicate that the parties intended completion of performance by a certain date to be an essential part of the bargain. The Court also noted that the parties worked together over a period of years with the goal of meeting the condition precedent and that the Mayfields rejected Koroghli's offer to waive the condition precedent. The Court held that time was not of the essence in their contract based on the terms of the contract and the parties' behavior and representations.

Next, the Court ruled that a demand for performance by a certain time would not have been a futile demand because Koroghli did not repudiate the contract or indicate that he did not intend to perform under it. Therefore, if the Mayfields had made a demand for performance within a reasonable amount of time, they would have been able to repudiate the contract if Koroghli failed to perform by the set date. The Court held that time was not of the essence in their contract with Koroghli because the Mayfields did not demand performance and they were not excused from that obligation by futility.

2. *Reasonable Time for Performance of the Contract*

The Mayfields argued that three years exceeds a reasonable time for performance of the contract and since Koroghli did not perform, their repudiation was warranted. The Court held that a reasonable time for performance has not yet expired even though the district court did not make express findings on the subject. Both parties had extensive knowledge of land transactions of this type and they worked together in order to obtain the necessary permits and approvals for commercial subdivision. The Court held that under the circumstances of the case, the passage of three years after the formation of the contract did not exceed a reasonable time for performance. Therefore, the Mayfields repudiation was not appropriate and was a breach of contract.

3. *Tender of Performance by Koroghli*

The Mayfields argued that the district court erred in granting specific performance because did not tender specific performance. The Mayfields asserted that Koroghli could not tender performance according to the terms of the contract because the commercial subdivision condition had not been fulfilled at the time of repudiation. Nevada law states that a party seeking specific performance must have tendered performance according to the terms of the contract before a grant of specific performance is appropriate.⁸ However, if a purchaser of real property has not yet tendered the purchase price, a grant of specific performance is still appropriate if the purchaser can demonstrate that he is "ready, willing, and able to perform."⁹

The Court noted that it is undisputed that Koroghli offered to close escrow without the condition being met and tender the purchase price to close the deal. The Court held that Koroghli adequately demonstrated that he was ready, willing, and able to perform. In rebuttal to that assertion, the Mayfields argued that Koroghli's offer of tender of performance was deficient

⁸ *Serpa v. Darling*, 107 Nev. 299, 305, 810 P.2d 778, 782 (1991).

⁹ *Id.* at 304, 810 P.2d at 782.

because the commercial subdivision precedent was never met. In addition, the Mayfields asserted that Koroghli could not unilaterally waive the condition because it was for the benefit of both parties.

The Court proceeded to review the law on unilateral waiver of a condition in a contract. A party may unilaterally waive a condition in a contract if the condition was included in the contract for his or her benefit.¹⁰ Whether a particular condition is for the benefit of one or both parties is a question fact.¹¹ This determination depends of the facts and circumstances of the particular case as well as the language of the contract at issue.¹² The test is whether the condition was intended by both parties to be included in the contract for the benefit of both parties, not whether the condition was in fact of a benefit to both parties.¹³

The Court examined the history of the commercial subdivision clause and found that the clause was included at Koroghli's request to ensure that the property could be used in the manner expected by him. The Court held that the district court did not err by finding that the commercial subdivision clause was included in the contract for Koroghli's benefit. It is irrelevant to that determination that the clause may have benefitted the Mayfields in the future. Based on this analysis, the Court held that Koroghli could unilaterally waive the commercial subdivision clause. The offer to waive the condition and tender the purchase price at the time of the Mayfields repudiation was satisfactory proof that he was ready, willing, and able to perform. The district court's grant of specific performance was appropriate.

B. Apportionment of Litigation Costs

The Mayfields dispute the district court's award to Koroghli of costs incurred by litigation because a portion of those costs were incurred during litigation against Ross. The Mayfields claimed that the award of costs should be reduced by half. Koroghli argued that the apportionment of costs was impractical and not required when claims pursued against multiple parties are substantially intertwined. He asserted that the claims against the Mayfields and Ross were substantially intertwined.

The issue of the propriety of apportioning costs when the prevailing party pursued similar claims, based on the same factual circumstances, against multiple defendants is a question of first impression in the state of Nevada. The Court followed the California Court of Appeals in its determination that apportionment is not mandatory in such an instance, as the district court could reasonably have concluded that the claims were so "inextricably intertwined" as to make it "impracticable, if not impossible, to separate the multitude of conjoined activities into compensable or noncompensable time units."¹⁴

¹⁰ *Silver Dollar Clubv. Cosgriff Neon*, 107 Nev 299, 305, 810 P.2d 778, 782 (1991).

¹¹ See *Pelligreen v. Wood*, 111 S.W.3d 446, 451 (Mo. Ct. App. 2003); *Crescenta Valley Moose Lodge No. 808 v. Bunt*, 87 Cal. Rptr. 428, 431 (Ct. App. 1970).

¹² *Pelligreen*, 111 S.W.3d at 451.

¹³ *Id.*

¹⁴ *Abdallah v. United Saving Bank*, 51 Cal. Rptr. 2d 286, 293 (Ct. App. 1996).

The Court adopted the reasoning in the *Abdullah* court's reasoning and held that, in an action in which a plaintiff pursues claims based on the same factual circumstances against multiple defendants, it is within the district court's discretion to determine whether apportionment is rendered impracticable by the interrelationship of the claims against the multiple defendants. The district court must, however, attempt to apportion the costs before determining that apportionment is impracticable. When attempting to apportion costs, the district court must make specific findings, either on the record during oral proceeding or in its order, with regard to the circumstances of the case before it that render apportionment impracticable.

The Court found that the district court ruled that Koroghli's claims against the Mayfields and Ross were so intertwined that apportionment was impracticable. However, the district court did not attempt to apportion the litigation costs before making its ruling awarding Koroghli costs. The Court reversed the award of costs to Koroghli and remanded this matter to the district court for it to consider the practicability of apportioning costs.

Conclusion

The Court affirmed the grant of specific performance to Koroghli for the contract for the sale of real property with the Mayfields. The Mayfields did not have the right to repudiate the contract without a demand for performance or a clause making time of the essence. Furthermore, Koroghli was able to waive the condition precedent because it was included in the contract for his benefit. Lastly, the Court adopted new rules governing the apportionment of costs when the prevailing party pursued similar claims, based on the same factual circumstances, against multiple defendants. The Court reversed and remanded the matter of costs for the district court to consider the practicability of apportioning costs.